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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1941.

JOHN P. NICK and
CLYDE A. WESTON,
Petitioners,
vs.
UNITED STATES OF AMERICA,
Respondent.
No. 712.

PETITION FOR REHEARING OF APPLICATION FOR WRIT OF CERTIORARI.

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PETITION FOR REHEARING OF APPLICATION FOR WRIT OF CERTIORARI.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioners respectfully petition and move the Court to grant them a rehearing in the above-entitled cause, in which their application for certiorari was denied by this Court on the 24th day of November, 1941, and in support of their petition and motion say:

1. The Honorable Court apparently inadvertently overlooked that Section 420 (a), Title 18, United States Code, has never been construed by this Court.

2. The Honorable Court apparently inadvertently overlooked that there is a direct conflict in the decision of the

Eighth Circuit Court of Appeals in this case and the Second Circuit Court of Appeals in the case of United States v. Local 807, in 118 F. (2nd) 684, in that the decision in petitioners' case denies the right of a bona fide labor organization **(not an outlaw labor union)**, through their representatives, to negotiate for wages, hours and conditions of employment **(the indictment admits that the petitioners did secure the 1937 wage scale contract and that the union worked under it and enjoyed its benefits, that is, the wages, hours and working conditions prescribed therein** [Par. 17, R. 19]), while the case of United States v. Local 807 holds (l. c. 686):

> **"For the foregoing reasons, we do not believe that the act made it a crime for labor unions to get jobs or an increase in wages for its members, even by threats of violence."**

The petitioners respectfully suggest that they should not be deprived of their liberty by the denial of a review of their case while there is any doubt in the mind of this Court or of the Department of Justice, and the petitioners further respectfully suggest that there must be some doubt by this Court, as well as the Department of Justice, because this Court granted certiorari on the application of the United States in United States v. Local 807. See case No. 131, Supreme Court of the United States, from which we quote the following:

> "Reasons for Granting the Writ.
>
> "1. The decision below is the first rendered by an appellate court construing the Anti-Racketeering Act; it presents an important question of statutory interpretation which has not been, but should be, settled by this Court.
>
> "The decision below, if allowed to stand, would deprive the Anti-Racketeering Act of a great deal of

its validity. That decision, in effect, provides labor racketeers with a ready formula for easy evasion of the Act; they need only require that the money they extort be paid in the form of wages, and assure that a proper proffer of services (whether desired or not) is made, and the prohibitions of the Act become inapplicable to them. A decision placing such a drastic restriction upon the practical operation of an important Act of Congress should, we submit, be reviewed by this Court.

"The initiation of additional prosecutions in other circuits in an attempt to secure a conflict of decisions would not be a satisfactory alternative to the grant of a writ of certiorari in this case. Such a course would mean that various defendants might from time to time be brought to trial and convicted under an interpretation of the statute which this Court might later hold to be erroneous. It would also mean, if the Government's position should ultimately be sustained by this Court, that the Act would have been rendered inoperative within the Second Circuit, as applied to this important class of cases, during the period required for the institution of additional prosecutions elsewhere and for securing review thereof by the appellate courts. In these circumstances, the desirability of a review of the present case by this Court seems evident.[14]

([14];—Footnote)—The grant of certiorari will bring in issue not only the meaning of the exemption of 'wages' paid by a 'bona fide' employer to a 'bona fide' employee, but also the meaning of the proviso in Section 6, which reads:

" 'That no court of the United States shall construe or apply any of the provisions of this Act in such manner as to impair, diminish, or in any manner affect the rights of bona fide labor organizations in lawfully carrying out the legitimate objects thereof, as such rights are expressed in existing statutes of the United States.' "

3. The Honorable Court apparently overlooked that the Circuit Court of Appeals' decision in this case, if allowed to stand, denies the right of labor organizations or their representatives to threaten to strike in order to secure wages, hours and better working conditions, and is therefore contrary to the labor policy of the United States as outlined in both the Norris-La Guardia Act, Title 29, Sections 101-105, United States Code, and the National Labor Relations Act, Title 29, Section 151, United States Code.

4. This Honorable Court apparently overlooked the fact that a wage controversy in St. Louis, Missouri, between the moving picture theatre owners and the union of the moving picture operators, does not involve interstate commerce; that a threat by the operators to strike does not interfere with interstate commerce. **See testimony of film exchange executives to effect that petitioners did not interfere with transportation of films** (R. 112, 122, 127).

5. This Honorable Court apparently inadvertently overlooked that the communication of a wage demand by the operators to the theatre owners, accompanied either with or without a threat to strike, is an exercise of freedom of speech and that the Circuit Court of Appeals' decision holds that the Anti-racketeering Act forbids such an exercise of freedom of speech, if the communication can, under any circumstances, be interpreted as being partially to secure wages, hours and working conditions, and partially for the personal benefit of the labor leaders. The petitioners submit that the first amendment is unqualified and unlimited and absolutely forbids Congress to make any law of any kind abridging the freedom of speech. The opinion of the Circuit Court of Appeals should be reversed, because it confuses the power of Congress to regulate speech with the reserved powers of the people. The people have never delegated to Congress the right to abridge freedom of speech in any respect.

6. Petitioners respectfully suggest that the Supreme Court of the United States should not place its stamp of approval upon a trial where the essential fact, namely, the implied threat to strike, was made out by hearsay testimony which permitted the petitioners' accusers to delineate their (the accusers') states of minds. It must be remembered that the petitioners' accusers here were parties to the 1937 wage contract and that the petitioners were the other parties to the same contract. Therefore, to permit one party to a written contract to testify as to the negotiations is contrary to law. Furthermore, to permit such a party to testify to his state of mind in order to supply a link necessary to convict in a criminal trial, is absolutely unfair and, until this case was tried, unheard of. See argument under point III, page 23 et seq., petitioners' brief.

7. It was wholly unfair for the trial court to admit into the evidence third party conversations held outside the presence of the petitioners, or either of them (R. 262, 263, 364, 368-370, 384, 499, 498).

8. The Court's charge was highly prejudicial and in so many words told the jury to **"vote for a conviction"** (R. 839, 842). Therefore, the petitioners were denied a trial by jury, but, on the contrary, were tried and convicted by the Judge.

The petitioners respectfully and humbly petition the Court to reconsider its order denying their application for certiorari and pray that they be not condemned as felons unless and until the Supreme Court of the United States shall have reviewed this whole case and heard argument.

Petitioners respectfully suggest that they have presented at least seven substantial grounds for the granting of their application for certiorari, viz.:

1. Conflict of decisions.

2. Matter of wide public interest.

3. Conflict of statute with labor policy as expressed in other statutes.

4. Constitutional questions.

5. Lack of authoritative construction of Act by this Court.

6. Unfair trial below where Court made wide departure in applying rules of evidence.

7. Prejudicial charge by a trial court which practically denied petitioners a trial by jury.

CONCLUSION.

Wherefore, petitioners pray that the Court set aside its order denying petitioners' application for writ of certiorari; that this Court grant petitioners' application for certiorari and set the case for argument at an early date.

Respectfully submitted,

SIGMUND BASS,
BRYAN PURTEET,
Attorneys for Petitioners.

Of Counsel:

WARREN E. MILLER,
Washington, D. C.

Certificate.

Come now Sigmund Bass and Bryan Purteet, counsel for petitioners in the within cause and members of the bar of this court, and respectfully state to the Court that the petition for rehearing herein is filed not for delay, but in

good faith and believed by each and all of the undersigned counsel for petitioners herein to be meritorious, and that the foregoing motion has been written and filed in good faith and in the honest belief that this motion of petitioners for rehearing should be granted.

Sigmund Bass,
Bryan Purteet,
Attorneys for Petitioners.

December 11, 1941.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1941.

JOHN P. NICK and CLYDE A. WESTON,
Petitioners,
vs.
UNITED STATES OF AMERICA,
Respondent.
No. 712.

PETITION

For Leave to File a Second Petition for Rehearing of Application for Writ of Certiorari,

SECOND PETITION,

and

BRIEF IN SUPPORT THEREOF.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1941.

JOHN P. NICK and CLYDE A. WESTON,
Petitioners,
vs.
UNITED STATES OF AMERICA,
Respondent.
No. 712.

PETITION FOR LEAVE TO FILE A SECOND PETITION FOR REHEARING OF APPLICATION FOR WRIT OF CERTIORARI.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioners respectfully request leave to file a second petition for rehearing of application for writ of certiorari.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1941.

JOHN P. NICK and CLYDE A. WESTON,
Petitioners,
vs.
UNITED STATES OF AMERICA,
Respondent.
No. 712.

SECOND PETITION FOR REHEARING OF APPLICATION FOR WRIT OF CERTIORARI.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

1. Your petitioners respectfully petition and move the Court to reconsider the Court's order of December 22, 1941, wherein the Court denied petition for rehearing of application for writ of certiorari.

2. Petitioners say that the Court's denial of petitioners' application for certiorari and denial of petition for rehearing took place before this Court decided the case of United States v. Local 807, 62 S. Ct. 642, 86 L. Ed. 574, wherein the Court held:

a. That the anti-racketeering act was intended to eliminate terroristic activities by professional gangsters and

was not intended to interfere with traditional labor union activities;

b. That the anti-racketeering act excepts "any person who * * * obtains or attempts to obtain * * * the payment of wages from a bona fide employer to a bona fide employee";

c. That the intent of the employer to pay for labor or to pay for protection from violence is not controlling;

d. That the Congress intended to leave unaffected the ordinary activities of labor unions;

e. That labor disputes are not comprehended under the act and that violence or extortion growing out of labor disputes, while proper subjects for federal congressional control, are not covered by the anti-racketeering act.

3. Petitioners suggest to the Court that the record in their case shows that each had been, for more than thirty years past, members of a bona fide labor union; that the indictment (Tr. p. 19, paragraph 17) alleges that the petitioners were officers and representatives of a bona fide labor union and as such negotiated and were negotiating wage contracts at the time of the acts complained of in the indictment; that the proof most favorable to the government merely shows by way of hearsay an implied threat on the part of petitioners to call a strike unless petitioners' demands on behalf of the union for increased wages be met (R. 345). Petitioners say that the record (Tr. 277-287) shows that they secured the 1937 wage contract under which the union worked and collected wages.

Wherefore, petitioners suggest that the Court's decision in United States v. Local 807, in their opinion, indicates that they are being unlawfully confined in prison, and respectfully pray that this, their second petition for rehearing, be granted and that the writ of certiorari be granted, to the end that their conviction be carefully reviewed by this Honorable Court.